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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,313	02/22/2005	Howard Kneebone	37388-404800	5973

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EXAMINER

GRAVINI, STEPHEN MICHAEL

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 07/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/525,313	<b>Applicant(s)</b> KNEEBONE, HOWARD	
	<b>Examiner</b> Stephen Gravini	<b>Art Unit</b> 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 22 February 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2005222</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 18-21 are rejected under 35 U.S.C. 101 because the claimed invention is both a process and a machine or apparatus. Current Office practice limits obtaining a patent on either a process or apparatus but not both. In this application, claims 18-21 are method steps dependent upon an apparatus. Since these claims incorporate both subject matter invention categories, process and apparatus, allowable only in an alternative, those claims are rejected under section 101 of the patent statute as improper claiming of different statutory categories as one invention. Those claims will be examined in light of the prior art under the assumption that the claims can be independently claimed as a separate category of invention.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. That claim recites "the enclosure" which is construed as indefinite since it lacks a positive antecedent basis. Claim 12 will be examined under the assumption that it is not indefinite.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-12, 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Augustine et al. (US 5,860,292). Augustine is considered to disclose the claimed invention comprising:

an evaporation chamber **130** that is inflatable; and

fluid flow control means **164** for controlling the respective introduction and release of gas to and from the chamber to control the inflation of the chamber;

wherein in use the inflated chamber is adapted for containing a volume of liquid in a pool at a base thereof-to be evaporated and carried out of the chamber as a vapour by the gas passing across the pool as discussed in column 7 lines 45 through 57.

Augustine is also considered to disclose the claimed fluid flow control means is used to control the gas pressure and the flow rate of gas within the chamber at column 7 line 58 through column 8 line 2, a fan **164** for introducing gas into the evaporation chamber, the fan sealably positionable at a hole made in a wall of the chamber, and sealably positionable valve at column 6 line 59, diluent ingress substantial prevention arrangement with a flexible wall as discussed in column 6, single layer flexible wall material at column 6 line 34, plastic material at column 6 line 35, self supporting in an inflatable state as shown in figure 9, evaporation chamber in the inflatable state is

Art Unit: 3749

arranged with a shape suitable for preventing the build up of a second fluid on the outer surface of the chamber as discussed in column 6, evaporation apparatus liquid body flotation adaptation as shown in figures 3 and 4, and passing, controlling, with causing method steps as discussed in columns 6-8.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Augustine in view of Strussion et al. (US 6,182,463). Augustine is considered to disclose the claimed invention as rejected above, except for the claimed variable speed fan. Strussion, another evaporation apparatus, is considered to disclose a variable speed fan at column 4 lines 32-46. It would have been obvious to one skilled in the art to combine the teachings of Augustine with the variable speed fan, considered disclosed in

Strussion for the purpose of allowing different volumetric flow rates of fluid in an evaporation apparatus.

Claims 13 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Augustine. Augustine is considered to disclose the claimed invention as rejected above, except for the claimed batch wise or continuous manner of treatment. It would have been an obvious matter of design choice to recite different manners of treatment since the claimed invention would be performed by the teachings of Augustine, regardless of the manner of treatment.

Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Augustine in view of Gaugler (US 2,093,834). Augustine is considered to disclose the claimed invention as rejected above, except for the claimed reintroduction condenser means. Gaugler, another evaporation apparatus, is considered to disclose a reintroduction condenser means at right column of page 2 lines 37-59. It would have been obvious to one skilled in the art to combine the teachings of Augustine with the reintroduction condenser means, considered disclosed in Gaugler for the purpose of allowing condensation of fluid in an evaporation apparatus.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gravini whose telephone number is 571 272 4875. The examiner can normally be reached on normal weekday business hours (east coast time).

Art Unit: 3749

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571 272 4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SMG  
July 5, 2006

*Stephen Shain*